Nos. 99-224; 99-582

Supreme Court, U.S.
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In The

Supreme Court of the United States

JACK DUCKWORTH, SUPERINTENDENT OF THE PENDLETON CORRECTIONAL FACILITY, *et al.*,

Petitioners,

v.

RICHARD A. FRENCH, *et al.*,

Respondents.

and

UNITED STATES OF AMERICA,

Petitioner,

v.

RICHARD A. FRENCH, *et al.*,

Respondents.

On Petitions For A Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

RESPONDENTS' BRIEF IN OPPOSITION TO PETITIONS FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

The Prison Litigation Reform Act, 18 U.S.C. §3626(e)(2), as modified by 18 U.S.C. §3626(e)(3), provides that the filing of a motion to terminate prospective relief operates as a stay of that relief no later than 90 days after the filing of the motion. Three circuit courts, including the Seventh Circuit in this case, have held that the statute cannot be properly interpreted as requiring the trial court, regardless of the circumstances, to stay prospective relief. No circuit has held to the contrary. Two of the circuit courts which have addressed this issue have held that the statute must be interpreted as allowing district courts to retain their equitable powers to enjoin the automatic stay provision provided an adequate showing is met. The court below held that the statute is not readily susceptible to such a narrowing construction. The court further held that the statute is unconstitutional as written because it specifies a rule of decision and more generally because it unconstitutionally intrudes on the power of a court to fulfill its judicial role. At the same time, the Seventh Circuit carefully noted that in considering a termination motion the district court must conform to the time limits in §3626(e)(2) unless compelling reasons are present.

The question presented is whether §3626(e)(2) violates separation of power principles by either unconstitutionally intruding on the power of a court to make a decision or by legislatively specifying a rule of decision.

PARTIES TO THE PROCEEDING

The petition of the State of Indiana petitioners, Charles B. Miller, Edward L. Cohn and Herbert Newkirk, accurately lists the parties to this proceeding. The petition of the United States also accurately lists all named parties but omits the fact that the respondents proceed on behalf of a certified class of all persons who are or may in the future be confined in the Pendleton Correctional Facility.

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RESPONDENTS' BRIEF IN OPPOSITION TO PETITIONS FOR WRIT OF CERTIORARI

The respondents, Richard A. French, Morris E. Dozier, Martin W. Bradberry and Henry C. Jennings, on behalf of a class of all persons who are or may in the future be confined in the Pendleton Correction Facility (hereinafter "the prisoner respondents"), respectfully request that this Court deny the petitions for writ of certiorari filed by both the United States and the Superintendent of the Pendleton Correctional Facility and the other State of Indiana petitioners (hereinafter "State petitioners"), seeking review of the Seventh Circuit's opinion in this case. That opinion is reported at 178 F.3d 437 (7th Cir. 1999).

STATEMENT OF THE CASE

The Statement of the Case contained in the petitions for writ of certiorari filed by the State petitioners and the Statement contained in the petition for writ of certiorari filed by the United States are incomplete. Neither Statement mentions that the Seventh Circuit's decision emphasized that its ruling was a narrow one which "does not prevent the state from asking that the prospective relief be stayed while an immediate termination motion is pending." 178 F.3d at 447. Additionally, neither Statement mentions that the Seventh Circuit's decision also holds "that the district courts must conform their actions to the time limits in §3626(e)(2) unless compelling reasons for setting them aside can be articulated." 178 F.3d at 446. Finally, the Seventh Circuit's decision also emphasizes

that, in the event prompt action is not taken by the district court, the court of appeals "has the power to require either prompt action or a stay of prospective relief by finding that a recalcitrant judge has abused her discretion." 178 F.3d at 447.

ARGUMENT

Reason for Denying the Writ

Plenary review of this case is inappropriate because the conflict in the circuits noted in both petitions is more illusory than real. The Prison Litigation Reform Act, 18 U.S.C. §3626(b), provides that, absent a showing of continuing violation of a Federal right and a showing of the continued appropriateness of past orders, prospective relief may be terminated on the motion of any party if specific time periods have elapsed (18 U.S.C. §3626(b)(1)) or if prospective relief was entered without certain required findings (18 U.S.C. §3626(b)(2)). In order to make the determination of a continuing violation and continued appropriateness under 18 U.S.C. §3626(b)(3), the district court may need to conduct an evidentiary hearing. The question is whether the automatic stay proscribed by 18 U.S.C. §3626(e)(2) must go into effect during the district court's consideration of the termination motion. Three circuits have so far reviewed the validity of 18 U.S.C. §3626(e)(2) and all three have held that the statute cannot be construed in the manner suggested by the State petitioners. The courts have not allowed the statute, despite its explicit terms, to cause an injunction to be nullified simply because of the filing of a motion to

vacate the judgment and the passage of time. To be sure, the circuits have drawn different conclusions as to the construction of the statute. The Fifth and Sixth Circuits have interpreted the statute as preserving the traditional equitable powers of the federal courts. The Seventh Circuit, by contrast, rejected the possibility of a narrowing construction and declared the statute unconstitutional. However, as described more fully below, this is a difference in approach more than a difference in outcome. In practical terms, the result in all three circuits is that courts have the power to stop enforcement of the automatic stay proscribed by the statute. Although the United States argues that the Seventh Circuit's construction of the law is erroneous, it merely proposes to give to district courts the right to stay the enforcement of 18 U.S.C. §3626(e)(2) which will lead to the result reached by the Seventh Circuit, the inapplicability of the automatic stay provision. The question of whether the Fifth and Sixth Circuit, as opposed to the Seventh Circuit, was correct in its approach simply is not an issue of significant importance which warrants plenary review.

Nor does the Seventh Circuit's decision in any way nullify or interfere with the recognized goal of the Prison Litigation Reform Act of allowing for the speedy termination of unnecessary and unwarranted decrees mandating court supervision. The Seventh Circuit emphasized that defendants could seek to stay orders pending review by the district court and, if this review was not undertaken within the time frame contemplated by 18 U.S.C. §3626(e), that mandamus from the court of appeals could be sought.

Finally the court of appeals correctly found that the State petitioners' argument that the statute prohibits a court from stopping the automatic stay from going into effect would render the statute unconstitutional under well recognized precedents of this Court.

I. The conflict in the circuits created by the Seventh Circuit's decision is not significant enough to warrant the exercise of plenary review

In *Hadix v. Johnson*, 144 F.3d 925, 937 (6th Cir. 1998), the court found that interpreting §3626(e)(2) as requiring an automatic stay, no matter the circumstance, once the relevant time period expired, would be "an unconstitutional incursion by Congress into the powers reserved for the judiciary." The court further found that the statute could be interpreted in a constitutional manner by inferring language giving district courts discretionary equitable powers to stay the automatic stay. 144 F.3d at 944-46. This interpretation was later adopted, as well, by the Fifth Circuit in *Ruiz v. Johnson*, 178 F.3d 385 (5th Cir. 1999). The Seventh Circuit decision in this case, on the other hand, found that the language of §3626(e)(2) was not sufficiently elastic to have read into it the language constructed by the Sixth Circuit. Consequently, the Seventh Circuit held the statute to be unconstitutional.

This theoretical conflict simply is not significant enough to warrant the attention of this Court. In the final analysis, all three circuits' decisions reach the same ultimate conclusion, albeit by different routes. The decision below holds that the automatic stay provision is unconstitutional, although a defendant may still apply for and

receive a stay under traditional equitable principles, and *Hadix* and *Ruiz* hold that the trial court retains its traditional equitable authority under the statute notwithstanding its reference to an automatic stay. Therefore, there is nothing in either *Hadix* or *Ruiz* which would require a different result in this case or, indeed, in any case. The continuation of any decree pending completion of the case is subject to the traditional equitable authority of the court.

This court has noted repeatedly that certiorari should be granted to resolve conflict on "important question[s]." *Aldinger v. Howard*, 427 U.S. 1, 3 (1976). *See also, Fuller v. Oregon*, 417 U.S. 40, 42 (1974); *Minnesota Mining Co. v. New Jersey Wood* Co., 381 U.S. 311, 314 (1965); *New York v. Saper*, 336 U.S. 328 (1949). The conflict in this case simply is not important since it may not alter what will actually occur in a district court faced with a motion to terminate prospective relief under the Prison Litigation Reform Act.

II. The Seventh Circuit's decision does not in any way modify or affect the Congressional purpose behind the Prison Litigation Reform Act

"Congress passed the PLRA in an effort, in part, to oust the federal judiciary from day-to-day prison management." *Inmates of Suffolk County Jail v. Rouse*, 129 F.3d 649, 655 (1st Cir. 1997). The State petitioners argue that the writ must be granted because the decision of the Seventh Circuit nullifies this objective. However, the Seventh Circuit stresses that its decision is not a license to delay the resolution of petitions to terminate decrees. The Seventh Circuit notes that:

> Our determination that the automatic stay provision is not enforceable does not mean that courts should not try to conform their conduct to it. Indeed, the contrary is true: we hold that the district courts must conform their actions to the time limits in §3626(e)(2) unless compelling reasons for setting them aside can be articulated. On an interlocutory appeal under §3626(e)(4), this court has the power to require either prompt action or a stay of prospective relief by finding that a recalcitrant judge has abused her discretion.

178 F.3d at 446-447. The Seventh Circuit also states that "[w]e emphasize again that our ruling is a narrow one. It does not prevent the state from asking that the prospective relief be stayed while an immediate termination motion is pending." 178 F.3d 447.

Although the State petitioners note that the district court has never ruled on their original motion to terminate, they neglect to mention that at no point have they ever sought an order staying prospective relief. Nor have they ever sought a mandate from the Seventh Circuit to force the district court to act. Instead they have only litigated this case. The fact that they have not availed themselves of existing constitutional mechanisms to force the district court to act does not mean that the Seventh Circuit's decision has nullified the Congressional objectives behind the Prison Litigation Reform Act. To the contrary, the Seventh Circuit's decision reaffirms the fundamental goal of the Prison Litigation Reform Act to prevent federal courts from using "consent decrees to intrude into a state criminal justice system and seriously

undermine the ability of the local justice system to dispense any true justice." H.R. Rep. No. 21, 104th Cong., 1st Sess. 9 (1995), *as quoted in Hadix*, 144 F.3d at 931.[1]

III. The Seventh Circuit correctly found that the statute is unconstitutional if it is interpreted as requiring, without exception, the suspension of decrees if motions to terminate are not ruled upon in the proscribed period.

The State petitioners argue that §3626(e)(2) must be interpreted as it is written; it gives no discretion to the trial court and instead mandates suspension of all decrees if a motion to vacate is not ruled upon within the proscribed time period. The Seventh Circuit held that the statute is unconstitutional if interpreted in this fashion.[2] That decision is correct and conforms to prior decisions of this Court.

"[T]he central judgment of the Framers of the Constitution [was] that, within our political scheme, the separation of governmental powers into three coordinate Branches is essential to the preservation of liberty." *Mistretta v. United States*, 488 U.S. 361, 380 (1989). Therefore,

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[1] Subsequent to the petitions in this cause, the district court set all pending motions for hearing on December 13, 1999.

[2] The Seventh Circuit also rejected the argument raised by the United States that the statute could be interpreted in a constitutional manner. However, as indicated in Section I, *supra*, this disagreement with the position of the United States is not grounds to grant the United States' petition for certiorari since both the United States and the respondents agree that 18 U.S.C. §3626(e)(2) cannot be interpreted as allowing an automatic stay to be invoked regardless of the circumstances.

"each of the three general departments of government [must be] entirely free from the control or coercive influence, direct or indirect, of either of the others." *Humphrey's Executor v. United States*, 295 U.S. 602, 629 (1935). Based on separation of power principles this Court has clearly held that Congress cannot vest the power to review judicial decisions in the other coordinate branches of government. *Plaut v. Spendthrift Farm, Inc.*, 514 U.S. 211, 218 (1995). This is because "the Framers crafted [Article III] . . . with an expressed understanding that it gives the Federal Judiciary the power, not merely to rule on cases, but to decide them, subject to review only by superior courts in the Article III hierarchy." 514 U.S. at 218-19. Yet, under the interpretation advanced by the State petitioners, §3626(e)(2) strips the district courts of the power to decide whether or not to issue a stay and instead the district court is reduced to being a clerk, effectuating the determination of Congress that the decree must be suspended, regardless of the circumstances. The Seventh Circuit decision correctly recognized that, as interpreted by the State petitioners, "(e)(2) represents an unconstitutional legislative encroachment into the powers reserved to the judiciary." 178 F.3d at 446.

Moreover, the State's argument that §3626(e)(2) properly prohibits courts from exercising their judicial powers also violates another principle emanating from separation of power concerns, that Congress cannot "prescribe rules of decision" in pending cases. *United States v. Klein*, 80 U.S. (13 Wall.) 128, 147 (1872). *See also, Guttierez de Martinez v. Lamagno*, 515 U.S. 417, 430 (1995) ("Congress may not 'prescribe rules of decision to the Judicial Department of the government in cases pending before

it.' "). Section 3626(e)(2) mandates the trial court to stay all prospective relief. The district court has no other choice or option but must conform its behavior and judgment to the dictates of Congress. "What is this but to prescribe a rule of the decision of the cause in a particular way?" *Klein*, 80 U.S. (13 Wall.) at 146.[3]

The Seventh Circuit decision therefore correctly applied prior decisions of this Court to reject the arguments of the State petitioners and to conclude that §3626(e)(2) represents an unconstitutional violation of rules stemming from the separation of powers. The statute unconstitutionally places the review of judicial decisions with Congress as opposed to courts and mandates a

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[3] The State petitioners, as did the dissent from the denial of rehearing *en banc*, argues that the Seventh Circuit's decision calls into question a host of statutes and procedural rules which contain time limits. As the Seventh Circuit noted this is not a procedural rule imposed on the judiciary and it is not a situation where Congress has imposed a time limit on an executive agency. 178 F.3d at 443-45. Instead, it is a rule which imposes a substantive judicial outcome. This is easily distinguished from, for example, the 10 day limit in Rule 65 of the Federal Rules of Civil Procedure for temporary restraining orders, which is designed to protect litigants subject to *ex parte* orders. Contrary to the State petitioner's argument, 18 U.S.C. §3626(e) is also distinguishable from the automatic stay in bankruptcy matters, 11 U.S.C. §362(a). The bankruptcy statute does not impinge upon the power of the federal court since, as noted by the Seventh Circuit below, it "has the effect of preserving the court's equitable powers over the entirety of the bankruptcy estate, not superseding or undermining them." 178 F.3d at 443. Moreover, in the bankruptcy setting "litigants routinely petition the bankruptcy court to modify the stay . . . " 178 F.3d at 444. The Seventh Circuit's holding in no way undermines these other laws and rules.

rule of decision. There is no need to review this decision since it closely conforms to the boundaries established by prior cases.

CONCLUSION

Certiorari is therefore not warranted. This case does not create a significant conflict with decisions of other circuits. It also does not interfere with the Congressional intent underlying the Prison Litigation Reform Act. Instead, the decision conforms to prior decisions of this Court. There are not grounds for granting either petition and for the foregoing reasons both petitions should be denied.

Respectfully submitted,

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